***THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA**

+ WRIT PETITION No.8100 of 2001

%Dated 11.10.2007

K.H.Sriramulu,
s/o. K.Hanumaiah,
aged about 56 years,
Mundy Merchant, Agriculture Market Yard,
Hindupur, Anantapur District.

… Petitioner.

VERSUS

$ The Director of Marketing,
Government of Andhra Pradesh, Hyderabad
and another.

… Respondents.

! Counsel for Petitioner: Sri O.Manohar Reddy,
Smt K.Hemalatha & Smt P.Radhika.

^Counsel for Respondents: Sri P.Bhanu Prakash,
Standing Counsel for Agriculture Market
Committee.

<GIST:

>HEAD NOTE:

? Cases referred

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.8100 of 2001

Dated: 11.10.2007

Between:

K.H.Sriramulu. .. Petitioner

And

The Director of Marketing,
Government of Andhra Pradesh, Hyderabad
and another. .. Respondents

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.8100 of 2001

ORDER:

The petitioner approached this Court and filed the present writ petition for a Writ of Mandamus declaring the action of the respondents in not extending the concessional benefits of the proceedings of the 1st respondent issued in L.Dis.No.Rc.II(2)/1287/95, dated 04.09.1996, to the petitioner as illegal, arbitrary, and consequently, direct the respondents to extend the said benefit to the petitioner and to pass such suitable orders.

2. The brief facts are that the petitioner is a commission agent in the Agriculture Marketing Yard, Hindupur and he made a representation to the Director of Marketing, Government of Andhra Pradesh, Hyderabad-1st respondent herein in the year 1992 requesting him to lease out one shop-cum-godown in the said Agriculture Market Yard. The 1st respondent considered the said representation, and accordingly, issued proceedings on 21.10.1992 granting permission to the person-in-charge of the Agriculture Marketing Committee, Hindupur to lease out one shop-cum-godown to the petitioner on rent at Hindupur Market Yard to carry on his business. Thereafter, the petitioner paid the rent at

the rate fixed by the authorities on par with other traders. Subsequently, the 1st respondent issued a letter, dated 19.11.1992, stating that the lease in respect of the godown allotted to the petitioner was for a period of three years commencing from 19.11.1992 and on the same terms and conditions as was given to other traders/commission agents in the Market Yard, Hindupur. According to the petitioner, though the lease period expired on 18.11.1995, the same was not renewed, but, however, he was allowed to continue his business in the shop-cum-godown allotted to him in the Market Yard, Hindupur.

It appears that various commission agents submitted a representation requesting the 1st respondent for reduction of rent for godowns fixed by the Executive Engineer, Cuddapah, effective from 01.12.1992. Considering the said representations and the recommendations of the Joint Director of Marketing, Cuddapah, the 1st respondent herein issued proceedings on 04.09.1996 reducing the rents liberally i.e., of 50% over the rents fixed by the Executive Engineer, Cuddapah for the period commencing from 01.12.1992 to 30.11.1995 in respect of godowns occupied by 20 traders which have been divided into compartments and also to those five traders who have partially partitioned the godowns and occupied them. However, the 1st respondent in the said proceedings also observed not to consider revision of rents for godowns allotted to ten traders during 1994, as the said allotment was subject to the payment of rent fixed by the Executive Engineer. According to the petitioner, at the time when he entered into an agreement in the year 1992, the rent was fixed at Rs.2,304/- and he paid the said rent of Rs.2,304/- up to the end of the lease period i.e., 18.11.1995, and subsequently, he was paying the rent at the concessional rate, thinking that he is also entitled to the

concessional benefit provided for in the proceedings, dated 04.09.1996, issued by the 1st respondent. However, a notice was issued by the 2nd respondent on 29.12.2000 stating that the petitioner fell in arrears of Rs.69,080/- for the period from 01.11.1995 to 31.03.2000 and an amount of Rs.22,304/- for the period from April, 2000 to November, 2000 and thus, directed him to pay a total sum of Rs.91,384/- within a period of seven days from the date of receipt of that notice. At that juncture, the petitioner approached this Court and filed the present writ petition saying that he is also entitled to the concessional benefit provided for under the proceedings dated 04.09.1996 issued by the 1st respondent.

3. Heard the learned counsel for the petitioner and Sri P.Bhanu Prakash, the learned Standing Counsel for Agriculture Marketing Committee.

4. Having perused the material on record and also considering the submissions made by the counsel, this Court is of the view that the proceedings dated 29.12.2000 issued by the 2nd respondent in directing the petitioner to pay a total amount of Rs.91,384/-, towards the arrears of rents payable by him, is contrary to the spirit of concessional benefit provided for under the proceedings dated 04.09.1996. It may be apt to refer to the said proceedings:

> "In the reference 1st cited, the Market Committee, Hindupur has forwarded the representation for reduction in the rent for godowns fixed by the Executive Engineer (M), Cuddapah effective from 1.12.92.
>
> The Joint Director of Marketing, Cuddapah in the reference 2nd cited has recommended for reduction in the rent for godowns classified as under.

i) to reduce the rent liberally in case of godowns occupied by 20 Traders which have been divided into compartments.

ii) to reduce the rent marginally in case of godowns partially partitioned and under occupation by 5 traders.

iii) Not to consider revision in rents for godowns allotted to 10 Traders during 1994 as the allotment was subject to payment of rent fixed by the Executive Engineer (M).

The Proposals of Joint Director of Marketing, Cuddapah have been examined and the Person-in-charge, Agrl. Market Committee, Hindupur is hereby permitted to collect the rent for godowns with a reduction of 50% over the rents fixed by the Executive Engineer (M), Cuddapah, only inrespect of category (i) and (ii) above. This concession of reduction to 50% shall be applicable for the period from 1-12-92 to 30-11-95, thereafter there shall be a further enhancement of 10% from 1-12-95 onwards, at the interval of every two years with enhancement of not less than 10% over the existing rates.

The Market Committee shall execute a fresh lease deed with the trader allottees for lease of godowns for a period not exceeding 11 months only, renewable from time to time on the condition of enhancement in the rents once every two years."

From the above, it is clear that the traders mentioned in clauses (i) and (ii) referred above are given concession of reduction to 50% over the rents fixed by the Executive Engineer (M), Cuddapah for the period from 01.12.1992 to 30.11.1995, thereafter with a further enhancement of 10% from 01.12.1995 at an interval of two years with enhancement of not less than 10% over the existing rates from 01.12.1995. It also further states that the Market Committee shall execute a fresh lease deed with the trader allottees for lease of godowns for a period not exceeding 11 months only, renewable from

time to time on the condition of enhancement in the rents once every two years.

5. Further, there is no doubt, as contended by the learned Standing Counsel for the respondents, that the lease period in respect of the godown allotted to the petitioner ended on 18.11.1995, and thereafter, there is nothing to establish that the said lease is renewed. From this, definitely, it can be construed that the petitioner is an unauthorized occupier of the godown, which was leased out to him on 01.11.1992. But, the notice, dated 29.12.2000, issued by the 2nd respondent, whereby the petitioner was asked to pay the arrears of rents, clearly indicates that they have accepted the petitioner's possession, otherwise, the Marketing Committee would not have issued such proceeding directing the petitioner to pay the arrears of rents. Moreover, nothing prevented the respondents to seek eviction of the petitioner from the godown allotted to him immediately after expiry of the lease period i.e., in the year 1995.

Hence, this Court is of the view that there is an implied consent by the 2nd respondent, and hence, it cannot be said that the petitioner is an unauthorized occupant of the godown allotted to him.

6. The learned Standing Counsel contended that the petitioner was allotted godown No.5 on 01.11.1992, and thereafter, he entered into an agreement on 19.11.1992, therefore, he is not entitled to the concessional benefit provided for as per the proceedings dated 04.09.1996, as it is evident from the said proceedings that the traders who have entered into agreements on or after 01.12.1992 alone are entitled to the concessional benefits, but not the traders who have entered into agreements prior to the said date. But, I am unable to

read those words from the said proceedings. In the first paragraph of the proceedings, dated 04.09.1996, it is clearly stated that the concessional benefit shall be applicable for the period from 01.12.1992 to 30.11.1995, and similarly, it also reads that the said concessions are extended only to the traders mentioned in clause (i) and (ii) of it, but not to those persons, who were allotted godowns during 1994. Hence, this Court is of the view that the said contention of the learned Standing Counsel also is untenable and is thus rejected.

7. No doubt, as contended by the learned Standing Counsel for the respondent, a revision lies against the said order, dated 04.09.1996, but from the proceedings, it is clear that the petitioner approached the first respondent i.e., Director of Marketing by filing a revision on 26.12.2001, but, however, the same was dismissed by the said authority on 31.03.2001 stating that since a decision has already been taken, the hearing of Revision petition does not arise. For that reason also, it cannot be said that the petitioner had approached this Court without exhausting the other remedies that are available.

8. From the above discussion, it is clear that the action of the respondents in not extending the concessional benefits of the rents as provided for under the proceedings dated 04.09.1996 to the petitioner is discriminatory, and thus, it is violative of Article 14 of the Constitution of India.

9. Accordingly, this writ petition is allowed and the respondents are hereby directed to extend the concessional benefits of the proceedings, dated 04.09.1996, to the petitioner, and further the respondents are directed to issue a fresh demand notice calling upon

the petitioner to pay the arrears, if any.

_____

(GOPALA KRISHNA TAMADA,J)

Note: L.R. copy to be marked.

Dt.11.10.2007

v v